IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8352 of 2006
With
CIVIL APPLICATION No. 15579 of 2007
In
SPECIAL CIVIL APPLICATION No. 8352 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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B G PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PARESH UPADHYAY for Petitioner(s) : 1,
MR PANDIT, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 27/12/2007

ORAL JUDGMENT

1. With the consent of the learned Counsel for both the sides, the matter is finally heard today, when the Civil Application No.15579 of 2007 is taken up for hearing.

2. The short facts of the case appear to be that that the petitioner joined the service in the Cooperative Department of the State Government on December 20, 1971 and as per the petitioner, since the period of 30 years of service was already completed, on 2.9.2005 the petitioner served notice to the Department for retirement under Rule 47 of Gujarat Civil Services (Pension) Rules, 2002 (hereinafter referred to as “Rules”) to retire w.e.f. 7.12.2005. On 6.12.2005, the petitioner was communicated that his application for retirement was rejected and it appears that based on the said communication there is further correspondence and since the petitioner did not join the duty at the place where he was posted, subsequent action is also taken for holding inquiry against the petitioner. It is under these circumstances, the petitioner has approached this Court by

preferring the present petition.

3. Heard Mr.Upadhyay, learned Counsel for the petitioner and Mr.Pandit, learned AGP for the State Authorities.

4. It appears that it is not in dispute that the petitioner has completed 30 years of service in Government. Rule 47 of the Rules reads as under:-

> “47. **Retirement on completion of thirty years' qualifying service:** (1) A Government employee may retire at any time after completion of thirty years' qualifying service, or he may be required by the appointing authority not lower in rank than that of appointing authority to retire in the public interest:
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> **Provided that -**
>
> (a) A Government employee shall give a notice of at least three months in writing to the appointing authority before the date on which he intends to retire; **Or**
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> (b) the appointing authority shall give a notice of at least three months in writing

to a Government employee before the date on which he is required to retire in the public interest.

(2) A Government employee, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall not be allowed to withdraw his voluntary retirement subsequently except with the approval of the appointing authority;

Provided -

that the request for withdrawal shall be made before the intended date of his retirement.

Explanation :

Qualifying service of thirty years referred in sub-rule (1) means qualifying service excluding extraordinary leave sanctioned in the entire service of an employee.

5. The aforesaid Rule provides liberty to the Government employee to retire after completion of 30 years of service. In the same manner it also gives liberty to the appointing authority

to retire such Government employee if such Government employee has completed 30 years of service. The only requirement as per the proviso is that the Government servant has to give notice at least three months in writing to the appointing authority before the date on which he intends to retire and the same is the requirement for appointing authority to serve notice to the Government employee, if he is to be retired in the public interest. Sub-rule (2) is for prohibition against withdrawal of such voluntary retirement in certain circumstances, which is not the subject matter of the present petition. The pertinent aspect is that if the language of the Rule 47 is considered in light of Rules 48 and 49, wherein the Government servant can make application for retirement upon completion of 20 years or 25 years, as the case may be, requirement as per Rules 48 and 49 is that such notice of voluntary requirement given under Sub-rule (1) of Rule 48 and Sub-rule (1) of Rule 49 requires acceptance by the appointing authority, subject to the proviso that if the

acceptance is not granted within the specified period as per the said Rules, it is deemed as granted. Such is not the language in Rule 47. Therefore, on a plain reading of Rule 47, it transpires that the right given to the Government employee or to the appointing authority to put an end to the service upon completion of thirty years does not require acceptance of notice by the appointing authority or acceptance of notice by the Government employee. Such rights are to operate independently, but subject to the discretion by the Government employee or by the appointing authority to be exercised before issuance of notice for such purpose as per Rule 47.

6. It is not the case of the respondent authorities that the petitioner has not completed 30 years of service on the date when the notice was served. Therefore, in view of the aforesaid admitted position that the petitioner did complete 30 years of service on the date when the notice was served for voluntary retirement, the notice will start operating from the date on

which it is issued and the petitioner would be entitled to retire from the date mentioned in the notice, which in the present case is 7.12.2005.

7. It appears that the respondent authorities have proceeded on the basis that the acceptance of such notice is a must by the Department and in absence of such acceptance there is compulsion on the part of the Government employee to continue in service. The second objection is raised by Mr.Pandit, learned AGP that the petitioner was reverted to Class-III Cadre and as the petitioner was not desirous to join the duty at the reverted place on the cadre on which he was reverted, he has tendered the resignation for voluntary retirement under Rule 47.

8. The first communication dated 21.11.2005 issued by the Additional Registrar (Administration of Cooperative Societies) shows that the objections are raised three folds; the first objection is that the petitioner has not joined the duty at the place where he was posted in Class-III. In view of the aforesaid interpretation of Rule 47

since there would be automatic cessation of relationship of the employer and the employee upon the expiry of the said notice period of three months, and when there is no requirement of acceptance of such notice, the objection raised can hardly be sustained in the eye of law. The second objection raised is for production of the certificate of the Director, Pension and Provident Fund. In my view, such aspect is not dependent upon for giving effect to the notice given by the Government employee under Rule 47. Such aspect is to be considered and finalized only at the time when the pension papers and the disbursement of the provident fund amount is to be made by the competent authority. It cannot be directly related to the operation of the notice for voluntary retirement under Rule 47. Third objection pertains to the repayment of the loan amount and the details thereof. If the amount of loan given to the Government employee is exceeding the retiral benefits payable to him, it may stand on a different footing, but if such amount, in any

case, can be recovered from the retiral benefits of such Government employee, it would not be proper to link up the issue of the details of the loan outstanding for the purpose of giving effect to the operation of the notice under rule 47 for voluntary retirement. It is also an admitted position that no inquiry whatsoever was pending against the petitioner at the time when the notice for voluntary retirement was given. Therefore, in any case, when no departmental inquiry whatsoever was pending against the petitioner and the petitioner had opted for voluntary retirement under Rule 47 of the Rules, and in view of the express language of Rule 47, it can be said that the petitioner stood retired from Government service on 7.12.2005 as per Rule 47.

9. The contention raised on behalf of the respondent authorities that the petitioner did not joint at the post of reversion and gave notice for voluntary retirement deserves to be considered. However, Mr.Upadhyay, learned Counsel appearing for the petitioner declared

before the Court that the petitioner at the most in view of the order dated 25.8.2005 can be treated as on the post of Class-III on the date when he stood retired on 7.12.2005. Therefore, if a Government employee, who is either facing disciplinary proceedings or is reverted to the lower post, has opted for voluntary retirement under Rule 47, the effect thereof shall not automatically get wiped out, but such action may be of the disciplinary proceedings or the reversion or as the case may be, may continue, subject to the right of such Government employee to challenge such action, as may be permissible in law. Since in the present case the petitioner himself has declared for his continuation in service up to the date of retirement i.e. 7.12.2005 as if the order of reversion dated 30.8.2005 is operated and given effect, no further discussion may be required and suffice it to say that the petitioner would stand as retired on 7.12.2005 on the post of Class-III, keeping in view the order dated 25.8.2005 at Annexure “I” issued by the State

Government, Cooperation Department (Annexure “I” to the affidavit-in-reply of the respondents).

10. In view of the aforesaid observations and conclusion, the subsequent proceedings initiated by the respondents, for not joining the duty after 7.12.2005, including that of charge-sheet at Annexure “I”, would not survive and cannot be maintained. It appears that one of the grounds raised on behalf of the respondents is that the petitioner had to join the duty at the place where he was to be posted on 5.9.2005 after relieving on 5.9.2005, but he did not join the duty and his leave was not sanctioned from 5.9.2005 till 7.12.2005 i.e. the date on which the notice was given to effect for voluntary retirement. Therefore, at the most the department can consider the period from 5.9.2005 to 7.12.2005 of the period as the leave to be adjusted against E.L. Or the balance leave of the petitioner and if there is no balance, such can also be treated as leave without pay. As per the provisions of Scheme of Voluntary Retirement of Rule 47, subsequent proceedings

for alleged misconduct cannot be maintained.

11. In view of the above, the impugned communication dated 6.12.2005 is quashed and set aside and it is declared that the petitioner stood retired as per Rule 47 from 7.12.2005. The respondents are further directed to process the pension papers of the petitioner in light of the observations made and to pay all retiral benefits to the petitioner as if the petitioner was in the cadre of Class-III after adjustment of leave and the outstanding amount towards housing loan, etc.

12. The aforesaid exercise shall be undertaken and completed within a period of three months from the date of receipt of the order of this Court.

13. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.

14. In view of the order passed in the main matter, the Civil Application would not survive and shall stand disposed of accordingly.

27.12.2007 **(Jayant Patel, J.)**

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